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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,371	11/25/2003	Randall Heath	043850.017	6020
25461	7590	11/17/2004	EXAMINER	
SMITH, GAMBRELL & RUSSELL, LLP SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592			VARNER, STEVE M	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/721,371	HEATH, RANDALL	
	Examiner Steve M Varner	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 November 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-10 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath in view of Patel et al.

Regarding claim 1, Heath claim 1 claims a decking system for placement on a subassembly, said decking system comprising: a plurality of elongated tubular elements for placement in lateral interlocking engagement with each other transversely of and spanning the distance of the subassembly, each of said plurality of tubular elements having a top portion, a bottom portion, a first side wall and a second side wall connecting said top portion with said bottom portion wherein said top portion extends laterally from said second sidewall beyond said first side wall, said top portion having formed thereon a downwardly extending longitudinal flange; wherein said bottom portion extends laterally from said first sidewall beyond said second side wall, said bottom portion having formed thereon an upwardly extending longitudinal wall defining an upwardly opening channel adjacent, said upwardly opening channel adapted to receive therein in watertight relation said downwardly extending longitudinal flange; a plurality of fasteners therethrough for engagement with the subassembly.

Heath does not teach a ledge formed therein a plurality of apertures proximate the upwardly extending longitudinal wall. Patel et al. shows a ledge (204) having formed therein a plurality of apertures (300) (Fig. 7). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to put a ledge as in Patel et al. in the structure of Heath to act as a nailing flange into the subassembly.

Regarding claim 2, Heath claim 2 claims a plurality of elongated tubular elements for placement in lateral interlocking engagement with each other transversely of and spanning the distance between the joists, each of said plurality of elements having a top portion, a bottom portion, a first side wall, and a second side wall, said first and second side walls connecting said top and bottom portions; wherein said top portion extends laterally from said second side wall beyond said first side wall, said top portion having formed thereon a downwardly extending longitudinal flange, wherein said bottom portion extends laterally from said first side wall beyond said second side wall, said bottom portion having formed thereon an upwardly extending longitudinal wall defining an upwardly opening channel between said second side wall and said longitudinal wall; said upwardly opening channel adapted to receive therein in watertight relation said downwardly extending longitudinal flange; wherein said flange is defined by elongated opposing flange walls each of said flange having a pair of spaced apart longitudinally extending ribs; and wherein said second side wall and said longitudinal wall have a pair of cooperatively spaced apart longitudinally extending ribs adapted to engage said flange wall ribs and form a moisture seal there along.

Heath does not claim a ledge having formed therein at least one aperture proximate said upwardly extending longitudinal wall, said at least one aperture adapted for the insertion of fasteners there through for engagement with the joists. Patel et al. shows a ledge (204) having formed therein at least one aperture adapted for the insertion of fasteners (300) there through for engagement with the joists (709) (Fig. 7). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a ledge as in Patel et al. in the structure of Heath to act as a nailing flange into the subassembly.

Regarding claim 3, Heath claim 3 claims at least one internal wall extending between said top and bottom portion.

Regarding claim 4, Heath claim 4 claims a surface tread formed on the exterior of said top portion comprising a series of lands and crests, including parallel major and minor lands, said major lands overlying at least said first side wall and each internal wall and separated by major crests, said major crest having formed therein said minor crests and minor lands

Regarding claim 5, Heath claim 5 claims wherein said major crests include a pair of planar surfaces intermediate said major land and an adjacent minor land.

Regarding claim 6, Heath claim 6 claims wherein each of said plurality of elongated members is formed by extrusion from a material selected from the group including PVC, polyethelene-teriphathlate, and aluminum.

Regarding claim 7, Heath claim 7 claims wherein said construction element includes a plurality pf spaced-apart holes formed in said fastening portion of said

channel for accommodating passage of fasteners therethrough to a supporting structure.

Regarding claim 8, Heath claim 8 claims wherein said construction element includes a plurality pf reinforcing ribs located between said side walls and interconnecting said top and bottom walls.

Regarding claim 9, Heath claim 9 claims a plurality of interconnected modular construction elements assembled together on a supporting structure.

Regarding claim 10, Heath claim 10 claims a plurality of elongated tubular elements for placement in lateral interlocking engagement with each other transversely of and spanning the distance between the joists; each of said plurality of elements having a top portion having a proximal end and a distal end; a bottom portion having a proximal end and a distal end; first side wall connecting said proximal end of said bottom portion with said top portion; and second side wall connecting said distal end of said top portion with said bottom portion; wherein said proximal end of said top portion extends laterally beyond said first side wall and has formed thereon a downwardly extending longitudinal flange; wherein said distal end of said bottom portion extends laterally beyond said second side wall to form a ledge, wherein an upwardly extending longitudinal wall is attached to said distal end of said bottom portion, said upwardly extending longitudinal wall defining an upwardly opening channel adjacent said second side wall adapted to receive therein in watertight relation said downwardly extending longitudinal flange; and a surface tread formed on the exterior of said top portion comprising a series of longitudinally extending lands and crests including parallel major

and minor lands said major lands overlying at least said first side wall and separated by major crests, said major crest having formed thereon said minor crests and minor lands.

Heath does not teach the upwardly extending longitudinal wall is attached between the second side wall and the ledge. Heath does not teach a ledge with a plurality of apertures adapted for insertion of fasteners there through for engagement with the joists. Patel et al. shows a ledge (204) with a plurality of apertures to insertion of fasteners (300) there through for engagement with the joists (709) (Fig. 7). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a ledge as in Patel et al. in the structure of Heath to act as a nailing flange for attachment to the subassembly. If the ledge were attached to an outside end of the bottom portion as in Patel et al. in the structure of Heath, the upwardly extending longitudinal wall would be between the second side wall and the ledge.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Phenicle et al. shows a method and apparatus for making double wall containers. Simko et al. shows a construction member for fencing decking and the like. Curatoio shows a reversible plastic building board with different colored sides. Davis shows a modular construction element.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SV



Carl D. Friedman
Supervisory Patent Examiner
Group 3600